FILED NOVEMBER 27, 2013

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of **SWAZI ELKANZI TAYLOR,** **Member No. 237093,** A Member of the State Bar.	)	Case Nos.: **12-O-13038-RAH** (12-O-14167; 12-O-14521; 12-O-14848; 12-O-15509; 12-O-15654; 12-O-15721; 12-O-15951) **DECISION**

Introduction[1]

Respondent Swazi Elkanzi Taylor (respondent) worked in real estate for many years prior to becoming an attorney and opening his own law practice. While working in real estate, respondent obtained a broad knowledge of the mortgage-lending business and the practices and procedures of mortgage lenders. When he became a lawyer, respondent used this knowledge when representing homeowners seeking to obtain home-mortgage-loan modifications or to resolve disputes with their mortgage lenders. The passage of California Senate Bill 94 (SB 94), which became effective on October 11, 2009, forced respondent, as well as almost all other attorneys representing homeowners seeking home-mortgage-loan modifications, to change business models. After that law went into effect, respondent began filing lawsuits against lenders and personal bankruptcies for his home-loan-modification clients in hopes that a

[1] Unless otherwise indicated, all references to rules are to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code unless otherwise indicated.

modification of the client's home loan would be included in the settlement of the lawsuits or the client's bankruptcy.

Unfortunately for a number of respondent's clients, respondent failed to fully perform the services for which the clients contracted, failed to communicate with the clients, and in some cases, improperly withdrew from employment and abandoned his clients. As a result of respondent's misconduct, many of respondent's clients were significantly worse off than they were when they retained respondent to represent them.

The court finds respondent culpable on 19 counts of professional misconduct involving 8 separate client matters. For the reasons set forth below, the court concludes that the appropriate discipline for the found misconduct is four years' stayed suspension and four years' probation on conditions, including two years' actual suspension that will continue until respondent makes restitution (with interest) for unearned or illegal fees in seven client matters totaling $47,266.30 and until respondent establishes his rehabilitation, fitness to practice, and learning in the law in accordance with Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.4(c)(ii).[2]

Significant Procedural History

The notice of disciplinary charges (NDC) in this matter was filed on February 13, 2013. On March 6, 2013, respondent filed a response to the NDC. Trial commenced on June 10, 2013. Thereafter, the court took the matter under submission for decision on August 29, 2013.

Senior Trial Counsel Michael J. Glass and Deputy Trial Counsel Kim Kasreliovich of the Office of the Chief Trial Counsel represented the State Bar of California (State Bar.) Respondent represented himself.

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[2] All further references to standards (or stds.) are to this source.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on June 1, 2005, and has been a member of the State Bar of California at all times since that date. Respondent has one prior record of discipline: *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221.[3]

Legislation Regulating Providers of Home-Mortgage-Loan-Modification Services

In 2009, state laws were enacted to protect homeowners facing foreclosures. California Legislators sought to curb abuses by "a cottage industry that has sprung up to exploit borrowers who are having trouble affording their mortgages, and are facing default, and possible foreclosure, if they are unable to negotiate a loan modification or any other form of mortgage loan forbearance with their lender." (Sen. Com. on Banking, Finance, and Insurance, Analysis of Sen. Bill No. 94 (2009 Reg. Sess.) as amended Mar. 23, 2009, pp. 6-7.)

SB 94 was one such law. When SB 94 became effective on October 11, 2009, it provided the following two safeguards to anyone looking for help in obtaining a home-mortgage-loan modification or other form of home-mortgage-loan forbearance: (1) a requirement that the homeowner-borrower be given a separate written consumer notice that it is not necessary to pay a third party to negotiate a loan modification or forbearance (Civ. Code, § 2944.6);[4] and (2) a

[3] Much of the discussion in the following section on legislation regulating providers of home-mortgage-loan-modification services is taken directly from the review department's opinion *In the Matter of Taylor, supra*, 5 Cal. State Bar Ct. Rptr. 221.

[4] Civil Code section 2944.6, subdivision (a) requires that before entering into a fee agreement, a person attempting to negotiate or arrange a loan modification or forbearance for a fee or other compensation must provide the borrower with the following information in at least a 14-point font "as a separate statement":

> It is not necessary to pay a third party to arrange for a loan modification or other form of forbearance from your mortgage lender or servicer. You may call your lender directly to ask for a change in your loan terms. Nonprofit housing counseling agencies also offer these and other forms of borrower assistance free of charge. A list of nonprofit housing counseling

proscription of advance compensation for loan modification or forbearance services, i.e., no fees can be charged or collected from a homeowner-borrower until all loan modification or loan forbearance services are completed (Civ. Code, § 2944.7).[5] SB 94 was designed in an attempt to "prevent persons from charging borrowers an up-front fee, providing limited services that fail to help the borrower, and leaving the borrower worse off than before he or she engaged the services of a loan modification consultant." (Sen. Com. on Banking, Finance, and Insurance, Analysis of Sen. Bill No. 94 (2009 Reg. Sess.) as amended Mar. 23, 2009, p. 7.) A violation of either of these safeguard provisions is a misdemeanor (Civ. Code, §§ 2944.6, subd. (c); 2944.7, subd. (b)) and, at least until January 1, 2017, subjects an offending attorney to discipline (§ 6106.3).

In *In the Matter of Taylor, supra*, 5 Cal. State Bar Ct. Rptr. at page 232, the review department held that Civil Code section 2944.7's proscription of advanced compensation is unambiguous and clearly applies to attorneys when they perform home-mortgage-loan-modification or other forms of home-mortgage-loan-forbearance services. Specifically, the review department held:

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agencies approved by the United States Department of Housing and Urban Development (HUD) is available from your local HUD office or by visiting www.hud.gov.

[5] Civil Code section 2944.7, subdivision (a)(1) reads:

> (a) Notwithstanding any other provision of law, it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following:
>
> > (1) Claim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform.
>
> * * *

> The language of Civil Code section 2944.7, subdivision (a), plainly prohibits *any person* engaging in loan modifications from collecting *any fees* related to such modifications until *each and every* service contracted for has been completed. (*In the Matter of Jaurequi* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 56, 59 [plain language of statute controlled where meaning lacked ambiguity, doubt, or uncertainty].) [Fn. omitted.] We find nothing ambiguous about the statute's language, or the legislative history, which provides that "legal professionals" are one of the groups the bill was designed to reach. [Fn. omitted.] (See 4 Miller & Starr, Cal. Real Estate (3d ed. 2011) § 10:145.10 [statute directed at brokers and attorneys who, as self-styled consultants, were holding themselves out as able to facilitate loan modifications, "but usually produced no worthwhile results after collecting substantial advance fees from desperate homeowners"].)

(*In the Matter of Taylor, supra*, 5 Cal. State Bar Ct. Rptr. at p. 232.) The review department's interpretation of Civil Code section 2944.7, subdivision (a), is, of course, binding on this court. (Rules Proc. of State Bar, rule 5.159(B).) Accordingly, this court must reject respondent's contentions that Civil Code section 2944.7, subdivision (a) is ambiguous in light of the language that SB 94 added to section 10026 to explicitly prohibit real estate professionals from dividing their services into components for purposes of avoiding provisions prohibiting advanced fees.

Case No. 12-O-13038 (Couwenberg Matter)

Facts

On February 19, 2011, Debra and Patrick Couwenberg retained respondent to obtain forgiveness of debt on their residential mortgage. Debra Couwenberg testified on behalf of her husband Patrick and herself.

In November 2011, respondent filed a lawsuit for the Couwenbergs in the Orange County Superior Court that was styled *Debra Couwenberg, et al. v. World Savings Bank FSB; Wells Fargo Bank NA, et al.* (*Couwenberg v. Wells Fargo*). On January 5, 2012, Wells Fargo filed a demurrer to the complaint. The hearing on the demurrer was set for February 24, 2012. On February 23, 2012, respondent filed a first amended complaint in the action.

On March 27, 2012, Wells Fargo filed a demurrer to the first amended complaint. Even though a hearing on that demurrer had been scheduled for April 27, 2012, respondent sent the

Couwenbergs an email on April 1, 2012, stating that he was withdrawing from representation "effective immediately." Debra received and read the email that same day. She immediately sent respondent an email asking him to remain as the Couwenbergs' attorney of record in *Couwenberg v. Wells Fargo* until they could find other counsel. In her email, Debra stated that she would attempt to find new counsel in the shortest time possible.

On April 6, 2012, just five calendar days after he first indicated that he wished to withdraw as counsel, respondent sent a letter to opposing counsel in *Couwenberg v. Wells Fargo* informing them that he no longer represented the Couwenbergs.

On April 11, 2012, the Couwenbergs sent respondent an email telling him that they were unable to find other counsel and that he could therefore dismiss their case. Debra did not have enough time to find other counsel and felt pressured by Respondent to agree to dismiss the case. On April 12, 2012, Attorney James Galliver, an attorney in respondent's office, signed a request for dismissal, and on April 18, 2012, the superior court entered the dismissal.

Conclusions

Count One - (Rule 3-700(A)(2) [Improper Withdrawal from Employment])

Rule 3-700(A)(2) prohibits an attorney from withdrawing from employment until the attorney has taken reasonable steps to avoid reasonably foreseeable prejudice to the client's rights, including giving due notice to the client, allowing time for the employment of other counsel, and complying with rule 3-700(D) and other applicable rules and laws.

The record clearly establishes that respondent withdrew from employment in *Couwenberg v. Wells Fargo* in willful violation of rule 3-700(A)(2). Respondent withdrew without giving due notice to the Couwenbergs particularly in light of the fact that a hearing on Wells Fargo's demur to the first amended complaint was scheduled for April 27, 2012. Moreover, respondent set an unreasonable deadline for his clients to obtain other counsel and

failed to take reasonable steps to avoid reasonably foreseeable prejudice to the Couwenbergs in willful violation of rule 3-700(A)(2).

Case No. 12-O-14167 – (Soriano Matter)

Facts

Fernando Soriano (Soriano) hired respondent to negotiate with the lender and eliminate his second mortgage so that he could re-finance his first mortgage. Respondent was retained to perform a loan modification or other form of mortgage loan forbearance.[6] Soriano and respondent agreed that the second mortgage on his property had to be first removed in order to accomplish their ultimate goal of refinancing or modifying the first mortgage. In the end, as set forth in more detail below, respondent failed to provide Soriano with any legal services of value regarding the loan modification or mortgage loan forbearance or relief that Soriano sought.

Payments to Respondent

On December 28, 2010, and again on January 12, 2011, Soriano paid respondent $1,500 in advanced fees (for a total of $3,000). On September 1, 2011, Soriano provided respondent with a debit/credit card number from which respondent could collect his fees. As a condition to respondent's use of the card to collect payments, Soriano required that respondent notify him in advance of each such use.

When respondent used Soriano's card to collect the following three payments from Soriano's bank account, respondent erroneously believed that either he or his staff had given Soriano advance notice:

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[6] While testifying at trial in this State Bar Court disciplinary proceeding, Soriano indicated that he did not seek a loan modification. Regardless of whether Soriano sought a loan modification, the evidence established, and expert testimony confirmed, that Soriano sought a form of home-mortgage-loan forbearance within the purview of SB 94.

October 12, 2011	$215
November 18, 2011	$160
December 22, 2011	$400

When Soriano later learned of the November 18, 2011 charge, Soriano demanded an accounting of respondent's use of the funds. Then, when Soriano later learned of the December 22, 2011 charge for $400, Soriano demanded that respondent return the money. Respondent charged the $400 to Soriano's card as a "per diem" charge.[7]

Respondent received Soriano's demands for an accounting and for refunds, but did not respond to them (i.e., he did not provide an accounting or reverse the charges he made to Soriano's card without notifying Soriano in advance). Upon Soriano's demand, Soriano's bank reversed the $400 charge. As noted below, Soriano also paid respondent $2,900 in advanced fees for bankruptcy services respondent agreed to provide Soriano.

In total, respondent charged Soriano advanced attorney's fees of $6,675 ($1,500 plus $1,500 plus $215 plus $160 plus $400 plus $2,900). Of that $6,675, respondent actually collected a total of $6,275 ($1,500 plus $1,500 plus $215 plus $160 plus $2,900). Despite Soriano's requests, respondent failed to provide Soriano with an appropriate accounting of these funds.

Soriano v. FCMC

On January 19, 2011, respondent sent the first in a series of letters to Soriano's second mortgage lender and investor. Respondent sent his last correspondence on April 24, 2012. The purpose of the correspondence to the lender was to obtain a loan modification for his client.

[7] The use of the term "per diem" is a misnomer. Attorney Galliver, an associate in respondent's law office, told Soriano that the charge applied to discovery, court appearances, motions, and responses to motions. Rather than constituting a "per day" charge, respondent and his law office used the term in the Soriano matter and other client matters to specify a flat fee for making or responding to motions or discovery requests.

On August 6, 2011, the fee agreement between Soriano and respondent was modified to provide, among other things, that respondent would file a lawsuit on behalf of Soriano against the lenders. Soriano, however, never understood that respondent was going to file a lawsuit. He thought that respondent was only going to negotiate with the banks to reduce his obligation to them. Nonetheless, on September 13, 2011, respondent filed a lawsuit for Soriano in the Los Angeles Superior Court, entitled *Fernando Soriano v. Franklin Credit Management Corporation and Deutsche Bank National Trust Company* (*Soriano v. FCMC*).

The defendants in *Soriano v. FCMC* filed a demurrer to the complaint. A hearing on the demurrer was set for January 17, 2012. But, on January 9, 2012, respondent filed a request for dismissal. The *Soriano v. FCM* lawsuit was meritless litigation. Respondent's contention to the contrary not only lacks credibility, but it is also implausible.

Respondent's Bankruptcy Services

On December 18, 2011, the fee agreement between Soriano and respondent was again modified. This time the agreement was modified to provide for respondent filing a Chapter 13 bankruptcy on behalf of Soriano and for Soriano to pay respondent an additional $2,900 in attorney's fees.

Respondent filed a Chapter 13 bankruptcy petition for Soriano. The filing, however, was seriously deficient in several respects. The bankruptcy trustee pointed these deficiencies out to respondent on February 22, 2012. The meeting of creditors was held, but had to be continued to give respondent time to correct the schedules he filed. When an appearance attorney appeared at the proceeding, the trustee requested that respondent himself appear at the next hearing.

Soriano properly made his initial Chapter 13 plan payment to the bankruptcy trustee. Respondent, however, never explained to Soriano that Soriano was required to make a plan payment to the trustee each month using a certified check or cashier's check. When Soriano

learned at the last minute that such payments were necessary, he attempted to make his second plan payment by personal check, but it was rejected. As a result, Soriano's bankruptcy was dismissed on April 16, 2012.

The bankruptcy trustee credibly testified in this State Bar Court disciplinary proceeding that respondent's work product in Soriano's bankruptcy case was "appalling." The trustee further credibly testified that, even if Soriano had made his second plan payment with a cashier's check, Soriano's bankruptcy would still have been dismissed because of the serious deficiencies in respondent's filings. In short, Soriano received no benefit from respondent's appalling bankruptcy filing, and respondent failed to earn any portion of the $2,900 advanced fee Soriano paid respondent to file that proceeding.

After Soriano's bankruptcy was dismissed on April 16, 2012, Soriano had to hire (and pay) another attorney to refile his bankruptcy. Soriano also had to pay new filing fees. At the time of the trial in this disciplinary proceeding, Soriano was successfully completing the bankruptcy his new attorney filed for him.

Conclusions

Count Two – (§ 6106.3 and Civ. Code, § 2944.7 [Home-Mortgage-Loan-Modification Services])

As noted above on page 4 and footnote 5, Civil Code section 2944.7, subdivision (a)(1) prohibits advance compensation for home-mortgage-loan-modification services and other forms of home-mortgage-loan-forbearance services even when the services are provided and performed by attorneys. (*In the Matter of Taylor, supra*, 5 Cal. State Bar Ct. Rptr. at pp. 225-226, 231,232.) Moreover, as noted above, section 6106.3, subdivision (a) subjects an attorney who willfully violates Civil Code sections 2944.6 or 2944.7 to professional discipline.

The record clearly establishes that respondent willfully violated Civil Code section 2944.7, subdivision (a)(1) when he charged Soriano a total of $6,675 in fees and collected a total

of $6,275 in fees from Soriano for home-mortgage-loan-modification and other home-mortgage-loan-forbearance services before respondent fully performed each and every service that respondent contracted to perform for Soriano or that he represented he would perform to Soriano. Respondent's willful violations of Civil Code section 2944.7, subdivision (a)(1) are made disciplinable by section 6106.3, subdivision (a).

Count Three - (§ 6068, subd. (c) [Attorney's Duty to Counsel/Maintain Only Legal or Just Actions or Defenses])

Section 6068, subdivision (c), provides that an attorney has a duty to counsel or maintain those proceedings, actions, or defenses only as appear to the attorney legal or just, except the defense of a person charged with a public offense. The record clearly establishes that respondent willfully violated his duty, under section 6068, subdivision (c), to counsel or maintain those actions, proceedings, or defenses only as appear to him legal or just when he filed *Soriano v. FCMC*, which was a meritless lawsuit.

Count Four - (§ 6068, subd. (m) [Failure to Communicate])

In count four, the State Bar charged respondent with willfully violating section 6068, subdivision (m), which provides that an attorney has a duty to promptly respond to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

At trial, on the motion of the State Bar, the court ordered count four dismissed in the interest of justice. The court clarifies that count four is dismissed with prejudice. (*In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657, 679-680.)

Count Five - (§ 6106 [Moral Turpitude])

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. The State Bar

failed to produce clear and convincing evidence that respondent acted with moral turpitude, as alleged in count five. Accordingly, count five is dismissed with prejudice.

Count Six - (Rule 4-200(A) [Unconscionable Fee])

In count six, the State Bar charged respondent with willfully violating rule 4-200(A), which provides that an attorney must not charge, collect or enter into an agreement for an illegal or unconscionable fee. Specifically, the State Bar charged that respondent charged Soriano an unconscionable fee when respondent charged $400 to Soriano's card on December 22, 2011. There was evidence that Soriano was aware that the $400 "per diem" fee was assessed for both depositions and motions.[8] This was a flat fee for specific services. The record fails to establish, by clear and convincing evidence, that the $400 flat fee was unconscionable under the factors set forth in rule 4-200(B). Accordingly, count six is dismissed with prejudice.

Count Seven - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. The record clearly establishes that respondent willfully violated rule 3-100(A) by recklessly failing to properly prepare Soriano's Chapter 13 bankruptcy petition for and by deliberately failing to correct deficiencies in the petition that were called to his attention by the trustee and that resulted in a continuance of the creditor meeting.

Count Eight - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

The record clearly establishes that respondent also willfully violated rule 3-110(A) by failing to perform any legal or home-mortgage-loan-forbearance services of value to Soriano regarding Soriano's first mortgage.

[8] As noted above in footnote 6, Attorney Galliver told Soriano that the $400 fee applied to more than depositions, as it is defined in the retainer agreement.

Count Nine - (Rule 4-200(A) [Unconscionable Fee])

At trial, on the motion of the State Bar, the court ordered count nine dismissed in the interest of justice. The court clarifies that count nine is dismissed with prejudice. (*In the Matter of Hindin, supra*, 3 Cal. State Bar Ct. Rptr. at pp. 679-680.)

Count Ten - (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])

Rule 4-100(B)(3) provides that an attorney must maintain records of all client funds, securities, and other properties coming into the attorney's possession and render appropriate accounts to the client regarding such property. An attorney has a duty, under rule 4-100(B)(3), to account for advanced fees. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 758.)

The record clearly establishes that respondent willfully violated rule 4-100(B)(3) by failing to provide Soriano with an accounting for the $6,275 in advanced legal fees respondent collected from Soriano

Case No. 12-O-14848 (White Matter)

Facts

Basia White had already obtained a loan modification before contacting respondent. However, Bank of America refused to accept her payments under the modified loan and began foreclosure proceedings on her home. In early August 2011, White hired respondent to assist her in forcing the bank to honor the terms of the modified loan. Under the fee agreement, White agreed to pay respondent $6,500 for various services, including preparing a demand letter to the bank, filing a civil lawsuit against the bank, filing a lis pendens, and seeking a temporary restraining order, if needed, to stop the foreclosure sale of White's home. Also, respondent agreed to provide related advice and services attendant to the law suit.

White paid respondent $6,500 in three payments: on about August 8, 2011; September 15, 2011; and October 11, 2011. Between August 2011 and October 2011, White made several calls, sent several emails, and made visits to respondent's law office. She attempted at least ten calls to respondent, but received no response or return call. Respondent would not speak with her, indicating he would do so when she had paid all of his $6,500 fee. During this period, White was afraid she was going to lose her house to foreclosure.

White made an appointment for a conference call with respondent on November 1, 2011, but when she called him at the appointed time on November 1, he was not available and did not participate in the call. On November 1, 2011, she sent him a letter indicating she was worried she was going to lose the house and needed to speak to him because she was leaving on a business trip to Poland. There was no response to this letter. On about November 22, 2011, White travelled to Poland. While there, she had a stroke and was hospitalized. She remained in Poland for almost two months until January 6, 2012.

Respondent filed a lawsuit against Bank of America and multiple Doe defendants on December 13, 2011. The bank filed a demurrer. A hearing on the demurrer was scheduled for May 22, 2012. Respondent received the notice of hearing on the demurrer. Around April 2, 2012, respondent attempted to contact White to inform her that he would be dismissing the case. He attached a copy of a request for dismissal, and advised White to contact him if she did *not* want the lawsuit dismissed. About six weeks later, on May 14, 2012, respondent filed a request for dismissal without prejudice of White's lawsuit against Bank of America. White never authorized respondent to dismiss her lawsuit.

In September 2012, White wrote to respondent and requested a refund of the amounts she had paid. She also requested a detailed invoice of the services rendered by respondent. She never received a response to her refund requests nor did she ever receive a refund or an

appropriate accounting for the $6,500 in advanced fees she paid respondent. Instead, White received an email from respondent's office stating that she owed an additional $196.

Conclusions

Count Eleven - (§ 6068, subd. (m) [Failure to Communicate])

The State Bar alleges that by failing to obtain White's approval prior to filing the request for dismissal, to inform White that he had filed a request for dismissal, and to inform White that her case had been dismissed, respondent failed to properly communicate significant developments to his client.

The failure to obtain White's approval of the dismissal is not within the purview of section 6068, subdivision (m). Furthermore, the record establishes that respondent informed White in rather clear terms of his intent to dismiss the lawsuit unless she contacted him and instructed him not to do so. Even though respondent's unilateral conduct was improper, respondent's failure to communicate to White that he did in fact dismiss her lawsuit as he told her that he would fails to establish a section 6068, subdivision (m) violation by clear and convincing evidence. Accordingly, count eleven is dismissed with prejudice.

Count Twelve - (§ 6068, subd. (m) [Failure to Communicate])

Respondent owed White an obligation to respond to her reasonable status inquiries regardless of whether she had paid all of the his $6,500 fee. The record clearly establishes that respondent failed to respond to her reasonable inquires in willful violation of section 6068, subdivision (m).

Count Thirteen - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned.

Respondent did not earn the entire $6,500 advanced fee that he charged and collected from White. Moreover, respondent failed to perform any legal service of value to White. Accordingly, the court appropriately deems the entire $6,500 unearned. (*In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315, 324; *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219, 231.) Moreover, because respondent dismissed White's lawsuit against Bank of America without her permission, he is not entitled to retain any portion of the $6,500 for the filing or service fees incurred in that lawsuit.

The record clearly establishes that respondent willfully violated rule 3-700(D)(2) when he failed to promptly refund the $6,500 unearned fee to White after he effectively withdrew from representing White when he filed the request for dismissal in White's lawsuit against Bank of America.

Count Fourteen - (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])

Because respondent failed to earn any portion of the $6,500 advanced fee, there was nothing for which he could account. Thus, respondent's misconduct was not the failure to account for the $6,500 advanced fee, but was the failure to promptly refund the $6,500 unearned, advanced fee. Count fourteen is dismissed with prejudice.

Case No. 12-O-14521 (Higginson Matter)

Facts

In October 2011, John Higginson hired respondent to prevent the foreclosure of his home. Higginson and respondent entered into a fee agreement for home-mortgage-lender-litigation services, including, but not limited to, the filing of a lawsuit and motion for a temporary restraining order (October 7, 2011 fee agreement). The October 7, 2011 fee agreement included provisions calling for the payment of a one-time fixed retainer fee of

$10,000 and an additional charge of $500 per court appearance, motion, opposition to motion, and/or deposition defense/examination.

On October 7, November 2, and December 3, 2011, Higginson made three payments to respondent totaling $10,000 as set forth in the October 7, 2011 fee agreement. From October 11, 2011, through January 9, 2012, Higginson paid respondent an additional $1,806 in fees and costs.

On October 12, 2011, respondent filed a civil lawsuit against Higginson's lender (*Higginson v. Aurora*). On December 29, 2011, the defendants in that case filed a demurrer to the complaint. Thereafter, on January 15, 2012, Higginson and respondent entered into an agreement for a Chapter 7 bankruptcy (January 15, 2012 fee agreement). Pursuant to the January 15, 2012 fee agreement, Higginson paid respondent $2,800 in advanced fees.

On March 12, 2012, respondent filed a first amended complaint in *Higginson v. Aurora*. On March 15, 2012, the defendants filed a demurrer to the first amended complaint. On May 7, 2012, respondent filed an opposition to the demurrer.

On May 18, 2012, respondent filed a chapter 7 bankruptcy petition on behalf of Higginson in the United States Bankruptcy Court for the Central District of California. Shortly after filing, the bankruptcy court filed a case commencement deficiency notice, requiring Higginson to file a certificate of credit counseling within 14 days after the filing of the petition. Failure to do so would result in the dismissal of the bankruptcy proceeding.

Higginson emailed respondent twice, inquiring whether respondent had provided the bankruptcy court with the information they were requesting. Respondent did not respond to either of the emails. Nor did respondent ever tell Higginson that Higginson was required to obtain credit counseling and to file a certificate of credit counseling with the bankruptcy court. Nor did respondent ever tell Higginson about the case commencement deficiency notice. Nor

did respondent ever respond to the case commencement deficiency notice. Thus, the bankruptcy court issued an order to show cause (OSC) re dismissal for Higginson's failure to file a certificate of credit counseling.

Respondent failed to respond to the OSC. Respondent failed to appear at the hearing. As a result, the court dismissed Higginson's bankruptcy proceeding. Respondent did not refund any portion of the $2,800 advanced fee.

On June 1, 2012, the court in *Higginson v. Aurora* filed an order overruling the demurrer with respect to three of the four counts in the first amended complaint, but sustaining the demurrer as to the remaining one count with 20 days' leave to amend. Respondent received notice of this order.

After receiving from respondent several notices to pay additional funds, Higginson and Higginson's partner at the time, Andrew Mikiel, complained to respondent about the fees and costs. The parties began to have difficulties, and it is clear that the attorney-client relationship was deteriorating. On July 9, 2012, respondent signed, but did not file, a request for dismissal without prejudice in *Higginson v. Aurora.*

On July 13, 2012, respondent sent Higginson a letter informing Higginson that respondent would dismiss Higginson's lawsuit if respondent did not hear from him within 24 hours. When respondent did not hear from Higginson within 24 hours, respondent served the request for dismissal on the opposing parties on July 18, 2012, and filed it with the court on July 25, 2012. A dismissal was thereafter entered immediately in *Higginson v. Aurora.*

Conclusions

Count Fifteen - (§ 6068, subd. (m) [Failure to Communicate])

Respondent clearly advised Higginson of his intention to file a request for dismissal unless respondent heard from Higginson within 24 hours and Higginson instructed him not to do

so. The fact respondent's demand that Higginson contact him within 24 hours and unilateral action dismissing *Higginson v. Aurora* were clearly improper (and unreasonable) does not establish a section 6068, subdivision (m) violation. The fact that respondent's demand that Higginson contact him within 24 hours was unreasonable and that respondent's conduct in unilaterally dismissing Higginson's lawsuit was improper does not establish that respondent failed to keep his client reasonably informed of significant developments. Instead, respondent's unreasonable demand and improper action establish that respondent improperly withdrew from representing Higginson and abandoned Higginson in willful and deliberate violation of rule 3-700(A)(2), as found below.

Count Sixteen - (Rule 3-700(A)(2) [Improper Withdrawal from Employment])

Respondent effectively withdrew from representing Higginson and abandoned Higginson when respondent served and filed the request for dismissal in *Higginson v. Aurora*. Without question, respondent failed to give Higginson due notice of his intent to withdraw and failed to allow Higginson time to employ other counsel. Likewise, respondent's demand that Higginson contact him within 24 hours was improper and violated not only the letter, but also the sprit of rule 3-700(A)(2). Furthermore, respondent's improper withdraw, which clearly violated the fiduciary duties that respondent owed to his client, was surrounded by overreaching. The court will appropriately consider respondent's overreaching as aggravating circumstance under standard 1.2(b)(iii).

Count Seventeen - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

It is clear that respondent did not earn the $10,000 fixed fee Higginson paid him for litigation services because respondent improperly withdrew form employment and improperly dismissed *Higginson v. Aurora* without authority. Respondent did not refund any portion of the

unearned $10,000 fixed fee to Higginson. By failing to do so, respondent failed to refund promptly the unearned $10,000 fixed fee in willful violation of rule 3-700(D)(2).

Count Eighteen - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

The record clearly establishes that respondent recklessly and repeatedly, if not intentionally, failed to perform legal services competently in willful violation of rule 3-110(A). Respondent failed to inform Higginson of the requirements for credit counseling and filing a certificate of credit counseling in his bankruptcy proceeding. Respondent not only failed to file a response to the bankruptcy court's OSC regarding dismissal, but respondent also failed to even attend the hearing on that OSC.

Count Nineteen - (§ 6106 [Moral Turpitude])

The State Bar contends that respondent committed an act involving moral turpitude when he falsely listed $1,500 as the amount of his attorney's fees in Higginson's bankruptcy petition when his fees were actually $2,800. Respondent credibly testified that the $1,500 figure was erroneously put in the petition by a member of his staff. Even though respondent is responsible for adequately supervising the work of his staff, a single staff error does not clearly establish that respondent engaged in an act involving moral turpitude. Accordingly, count nineteen is dismissed with prejudice.

Count Twenty - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

By failing to refund the $2,800 paid to respondent by Higginson as advance attorney fees, respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of rule 3-700(D)(2).

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Count Twenty-One-A - (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])

Because respondent failed to earn any portion of the $10,000 fixed fee or the $2,800 advanced fee, there was nothing for which he could account. Thus, respondent's misconduct was not the failure to account for those fee, but was the failure to promptly refund them. Accordingly, count twenty-one-A is dismissed with prejudice.

Case No. 12-O-15509 (Tolbert Matter)

Facts

On April 24, 2012, Kim Tolbert hired respondent to prevent the foreclosure sale of real property she owned with her husband. The fee agreement listed services such as preparation of a demand letter and the filing of a civil complaint. Tolbert agreed to pay respondent a one-time fixed fee of $7,300 (to be paid in several installments) and an additional fee of $300 for each court appearance, preparation of a motion, opposition to a motion, and/or deposition defense/examination, discovery demand, response to discovery demand, trial preparation and trial days. When she retained respondent, Tolbert provided him with her credit/debit card number for payment of her obligations to respondent.

Respondent filed a civil action on Tolbert's behalf shortly after he was retained on April 24, 2012 (*Tolbert v. Wells Fargo*). In connection with that lawsuit, respondent filed an ex parte application for a temporary restraining order and set an OSC regarding a preliminary injunction. Tolbert was required to post and did post a $5,000 bond in connection with the ex parte application for a temporary restraining order.

In May 2012, respondent charged $825 in fees on Tolbert's card without her knowledge or advance consent. After this charge, Tolbert sent an email to respondent informing him of her difficult financial condition, and instructing him not to make charges on her card without first obtaining her consent to the charge. Tolbert then authorized an $891.30 charge to her card, but

respondent charged $1,076.30 (which is $185 more than Tolbert authorized) causing Tolbert's bank account to be overdrawn. Tolbert demanded a refund of the $185 excess charge she did not authorize, but respondent never refunded the $185 to Tolbert.

Between April and August 2012, Tolbert paid respondent a total of $10,641.30. Of that amount, $7,300 was for the initial fixed fee in that amount. Respondent provide Tolbert with an accounting of the work he performed for her vis-à-vis the fees he charged and collected from her. (Exhibit E, pages 395-408.)

On August 9, 2012, respondent sent Tolbert an email informing her that he would be dismissing *Tolbert v. Wells Fargo* immediately due to her failure to pay an outstanding invoice. Tolbert immediately replied to respondent's email that same day instructing him *not* dismiss the lawsuit. Despite Tolbert's unequivocal instructions to the contrary, respondent dismissed *Tolbert v. Wells Fargo* on August 10, 2012. Further, respondent dismissed that lawsuit with prejudice. By dismissing the lawsuit, respondent effective withdrew from representing Tolbert.

Even though respondent dismissed *Tolbert v. Wells Fargo* with prejudice, respondent never had the $5,000 bond that Tolbert posted exonerated as respondent told Tolbert he would. Moreover, respondent failed to refund the unearned $7,300 fixed fee to Tolbert. Respondent did, however, unsuccessfully attempt to obtain a stipulation from the opposing party to exonerate the $5,000 bond. Respondent made no further efforts to obtain a court order exonerating the bond.

Conclusions

Count Twenty-One-B - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

Based on the accountings provided, respondent had earned all of the advance fees paid. However, because respondent intentionally deprived Tolbert of any benefit for that work by dismissing her lawsuit with prejudice, the court must deem the entire $7,300 fixed fee unearned. Accordingly, the court finds that respondent willfully violated rule 3-700(D)(2) by failing to

promptly refund the entire $7,300 after he effectively withdrew from representation when he dismissed her lawsuit on August 10, 2012.

Moreover, even though respondent violated rule 3-700(D)(2) by not promptly refunding the unearned $7,300 fixed fee, respondent must make restitution to Tolbert for the entire $10,641.30 she paid him because he deliberately deprived her of any benefit she obtained from the $10,641.30 she paid him. (Cf. *Sorensen v. State Bar* (1991) 52 Cal.3d 1036.)

Count Twenty-Two - (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])

As noted above, respondent provided Tolbert with an appropriate accounting with respect to the fees she paid. Accordingly, count twenty-two is dismissed with prejudice.

Count Twenty-Three - (§ 6106 [Moral Turpitude])

The record fails to establish, by clear and convincing evidence, that respondent deliberately charged $1,076.30 to Tolbert's card when Tolbert authorized him to charge only $891.30. At best, the record establishes that respondent charged $1,076.30 to Tolbert's card by mistake. A single mistaken charge does not involve moral turpitude. Accordingly, count twenty-three is dismissed with prejudice.

Count Twenty-Four - (Rule 3-700(A)(2) [Improper Withdrawal from Employment])

There was evidence that Tolbert did not want to continue with the lawsuit. She and respondent had discussions where respondent advised her that her chances of prevailing, given the fact that she had not paid her mortgage in four years, were very slim. Nevertheless, respondent was instructed by his client not to dismiss the case, and he ignored her instructions. In doing so, he improperly withdrew from employment in willful violation of rule 3-700(A)(2).

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Count Twenty-Five - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

By dismissing *Tolbert v. Wells Fargo* and not exonerating the $5,000 bond, respondent failed to perform legal services with competence in willful violation of rule 3-110(A).

Case No. 12-O-15721 (Sullivan Matter)

Facts

Kenny and Penny Sullivan (the Sullivans) hired respondent to provide home-mortgage-loan-modification services and other home-mortgage-loan-forbearance services. Pursuant to the fee agreement, respondent charged and collected a total of $5,150 in advanced fees from the Sullivans between March 2010 and April 2012. These fees were collected before respondent performed each and every service he had contracted to perform. Respondent did not provide an accounting for those fees.

As part of the fees respondent charged the Sullivans, respondent charged and collected $1,300 for a document respondent refers to as a "Financial Analysis" (FA). (See Ex. 81, page 3.) The FA is a brief document that performed calculations to generate a report that allegedly assisted respondent and the Sullivans in determining whether a loan modification was appropriate for them.

Conclusions

Count Twenty-Six – (§ 6106.3 and Civ. Code, § 2944.7 [Home-Mortgage-Loan-Modification Services])

The record clearly establishes that respondent willfully violated Civil Code section 2944.7, subdivision (a)(1) when he charged and collected $5,150 in advanced fees from the Sullivans for home-mortgage-loan-modification services and home-mortgage-loan-forbearance services before respondent fully performed each and every service that respondent contracted to perform for the Sullivans or that he represented he would perform for the Sullivans.

Respondent's willful violations of Civil Code section 2944.7, subdivision (a)(1) are made disciplinable by section 6106.3, subdivision (a).

Count Twenty-Seven - (Rule 4-200(A) [Unconscionable Fee])

In count twenty-seven the State Bar charges that respondent charged and collected an unconscionable fee from the Sullivans when he charged and collected $1,300 for the FA. According to the State Bar, the FA is a rather simple document that contains nothing but rudimentary calculations so that charging the Sullivans over $1,000 for the document constitutes an unconscionable fee within the purview of rule 4-200(A). In addition, the State Bar contends that the FA contributed little, if anything, to the determination of whether a loan modification was appropriate for the Sullivans and that in certain aspects the FA was incomplete if not misleading. The court cannot agree. The FA in the present proceeding is identical to the FA's that the review department analyzed in *In the Matter of Taylor*, *supra*, 5 Cal. State Bar Ct. Rptr. at page 227 and pages 233through 234. The review department held in *In the Matter of Taylor, supra*, 5 Cal. State Bar Ct. Rptr. at page 233 that fees ranging from $1,600 to $2,250 for an FA prepared by respondent were not unconscionable under rule 4-200(A). The State Bar is precluded from relitigating that issue in the present proceeding.

Count twenty-seven is dismissed with prejudice.

Count Twenty-Eight - (Rule 3-700(A)(2) [Improper Withdrawal from Employment])

At trial, on the motion of the State Bar, the court ordered count twenty-eight dismissed in the interest of justice. The court clarifies that count twenty-eight is dismissed with prejudice. (*In the Matter of Hindin, supra*, 3 Cal. State Bar Ct. Rptr. at pp. 679-680.)

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Count Twenty-Nine - (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])

By failing to provide the Sullivans with an accounting of the fees the Sullivans paid to respondent, respondent failed to render appropriate accounts to a client regarding all funds coming into respondent's possession in willful violation of rule 4-100(B)(3).

Case No. 12-O-15654 (Segnit Matter)

Facts

On April 7, 2009, Thomas and Susan Segnit (the Segnits) hired respondent to perform home-mortgage-loan-modification services for their real property in Connecticut. The Segnits paid respondent $2,000 in advance attorney fees. Respondent performed services for the Segnits which constituted the practice of law in Connecticut. Respondent was not then and is not now licensed to practice law in Connecticut.

Conclusions

Count Thirty - (Rule 1-300(B) [Prohibition on Practicing Law in Violation of Other Jurisdiction's Professional Regulations])

Rule 1-300(B) provides that an attorney must not practice law in a jurisdiction where to do so would be in violation of regulations of that jurisdiction's profession. By performing services for the Segnits which constituted the practice of law in Connecticut, respondent practiced law in a jurisdiction where practicing is in violation of the regulations of the profession in that jurisdiction in willful violation of rule 1-300(B).

Count Thirty-One - (Rule 4-200(A) [Illegal Fee])

By accepting representation of the Segnits and charging and collecting a fee from the Segnits when he was not entitled to practice law in Connecticut, respondent entered into an agreement for, charged, and collected an illegal fee in willful violation of rule 4-200(A).

Case No. 12-O-15951 (Lemmon Matter)

Facts

On August 11, 2010, Heidi Lemmon hired respondent to provide home-mortgage-loan-modification services for her residential real property. Respondent charged Lemmon an advanced fee of $3,900, which was to be collected in two installments: $1,950 after the preparation of a FA for Lemmon; and $1,950 after the preparation of a lender package. Respondent charged and collected these fees before each and every service contracted for had been completed.

Conclusions

Count Thirty-Two – Count Twenty-Six – (§ 6106.3 and Civ. Code, § 2944.7 [Home-Mortgage-Loan- Modification Services])

The record clearly establishes that respondent willfully violated Civil Code section 2944.7, subdivision (a)(1) when he charged and collected $3,900 in advanced fees from Lemmon for home-mortgage-loan-modification services before respondent fully performed each and every service that respondent contracted to perform for Lemmon or that he represented he would perform for her. Respondent's willful violations of Civil Code section 2944.7, subdivision (a)(1) are made disciplinable by section 6106.3, subdivision (a).

Count Thirty-Three - (Rule 4-200(A) [Unconscionable Fee])

Respondent provided Lemmon with a FA as described above in the analysis of the Sullivan matter, above. The State Bar again asserts that the fee charged for the FA was unconscionable. Count thirty-three is dismissed with prejudice for the same reasons set forth above under count twenty-seven.

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Aggravation

Prior Record of Discipline (Std. 1.2(b)(i))

Respondent has one prior record of misconduct, which is the Supreme Court's February 27, 2013 order in *In re Swazi Elkanzi Taylor on Discipline*, case number S207915 (State Bar Court case number 10-O-05171, etc.) (*Taylor* I). In *Taylor* I, the Supreme Court adopted the review department's discipline recommendation in *In the Matter of Taylor, supra*, 5 Cal. State Bar Ct. Rptr. 221 and placed respondent on two years' stayed suspension and two years' probation on conditions, including a six-month period of actual suspension that will continue until respondent makes restitution in six separate client matters that total $14,350 (plus interest).

In *Taylor* I, the review department found respondent culpable of (1) charging advanced compensation for home-mortgage-loan-modification services (§ 6106.3; Civ. Code, § 2944.7, subd. (a)(1)) in eight separate client matters and (2) failing to provide a homeowner-borrower a separate written consumer notice that it is not necessary to pay a third party to negotiate a loan modification or forbearance in a single client matter. In *Taylor* I, respondent was given mitigation credit for good character as reflected in the testimony of eleven witnesses. Furthermore, respondent's misconduct was aggravated by his multiple acts of misconduct, significant harm, and indifference/lack of remorse.

Multiple Acts of Misconduct (Std. 1.2(b)(ii))

Respondent present misconduct involves multiple acts of misconduct.

Harm to Clients (Std. 1.2(b)(iv))

Respondent often abruptly stopped working on his clients' matters when they were unwilling to continue to pay his fee. Instead of properly withdrawing from those relationships, he left some clients with little or nothing to show for his representation. In other cases, he charged his clients illegal fees and has not yet provided refunds.

Indifference

Respondent often placed blame on the clients when he should have focused on his own misconduct. While he is not required to display false penitence, he often did not acknowledge his obvious failings with respect to some of his clients. Except for stipulating to some facts, respondent has not accepted responsibility for his misconduct.

Mitigation

Good Character Evidence

Respondent presented character testimony from five individuals who all credibly testified as to respondent's honesty, integrity, and exceptional good character based on their personal observations of respondent's *daily* conduct and mode of living. Respondent's witnesses were aware of respondent's prior misconduct in *Taylor* I and of the charges against respondent in the present proceeding. The five witnesses were respondent's mother, father, brother, pastor, and legal assistant. Each of respondent's family members provided unique insights into respondent's growth as a person and a lawyer.

Perhaps most persuasive was the testimony of respondent's pastor, Dr. Cecil Murray, who was ordained 50 years ago and who served as the Senior Pastor of the First A.M.E. Church in Los Angeles for 27 years. Dr. Murray has known respondent since respondent was a small boy, and he spoke fondly about respondent's character and strong upbringing. He considers respondent a son in his ministry who he would trust with his life. In light of his knowledge of respondent's good character, Dr. Murray gives respondent the benefit of the doubt in assessing his misconduct. He believes that respondent honestly felt he was caught in a "gray zone" in trying to navigate the new loan modification law (i.e., SB 94).

Respondent's legal assistant, Joyce Marilyn, has worked for respondent for a few years and is impressed by the energy respondent displays. She watched as he interacted with clients

and noted that he treated clients with honesty and respect. She believes that respondent displayed passion in his practice, and that he always acts honestly and with integrity.

While not a wide range of references in the legal and general communities, the witnesses presented were sufficiently knowledgeable and credible so as to provide significant mitigating evidence. (Cf. *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.)

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the legal profession, and to maintain the highest possible professional standards for attorneys. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.) In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Second, the court looks to decisional law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.6(a) provides, in pertinent part, that when two or more acts of misconduct are found in a single disciplinary proceeding, and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

In this case, the standards provide for the imposition of a minimum sanction ranging from suspension to disbarment. (Stds. 2.4(b), 2.6, 2.10.) Standard 1.6(a) states, in pertinent part, "If two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable sanctions."

Standard 2.4(b) states that, "culpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or

culpability of a member of failing to communicate with a client shall result in reproval or suspension depending upon the extent of the misconduct and the degree of harm to the client."

Standard 2.6 provides that culpability of a member of a violation of section 6068 shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim. Standard 2.10 provides that culpability of a member of a violation of rule 3-700 shall result in reproval or suspension according to the gravity of the offense or the harm, if any, to the victim. Also relevant is standard 1.7(a), which requires that the discipline imposed in this proceeding be greater than that imposed in respondent's prior record of discipline.

The State Bar contends that respondent's multiple acts of misconduct in this proceeding warrant disbarment. The court cannot agree.

Cases that involve multiple acts of misconduct that include multiple failures to perform or multiple instances of client abandonment "warranting disbarment generally arise where there is a prolonged course of extensive misbehavior demonstrating a pattern of misconduct. (*Stanley v. State Bar* (1990) 50 Cal.3d 555 [attorney disbarred for 30 'egregious' acts of misconduct and abandonment of 20 clients over a seven-year period, in addition to acts of moral turpitude including stealing names from other attorneys' answering services, falsely claiming work performed, misappropriating settlement funds by forging clients' names, and conviction for burglary and larceny]; *Farnham v. State Bar* (1988) 47 Cal.3d 429 [seven instances of abandonment spanning approximately four years with prior disciplinary record resulting in disbarment]; *Slaten v. State Bar* (1988) 46 Cal.3d 48 [disbarment for failure to perform for seven clients during a five-year period, commingling funds, advising client to act in violation of law and an extensive discipline record]; *McMorris v. State Bar* (1983) 35 Cal.3d 77 [disbarment for habitual failure to perform in seven matters involving five clients during a nine-year period of

time, with two prior suspensions for the same misconduct].)" (*In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1, 15.)

The court finds *Young v. State Bar* (1990) 50 Cal.3d 1204 and *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498 instructive on the issue of discipline.

In *Young*, the attorney was placed on three years' stayed suspension and three years' probation on conditions, including actual suspension for two years. In that case, the attorney abandoned nine clients as a result of his unannounced move from California to Florida. In addition, he failed to perform legal services competently in eight of the nine client matters and failed to refund unearned fees in two of the client matters. There was substantial mitigation in *Young*, including: the attorney suffered from hepatitis, no substantial client harmed, demonstrated remorse, lack of a prior record of discipline, and full cooperation with the State Bar.

In *Valinoti*, the attorney was placed on five years' stayed suspension and five years' probation on conditions, including a three-year actual suspension, for his misconduct in nine immigration matters. In each of the nine matters, the attorney recklessly and intentionally failed to competently perform legal services. In one of the nine matters, the attorney abandoned the client just minutes before the hearing on the client's asylum application. In addition, the attorney in *Valinoti* aided and abetted nonattorneys engaging in the unauthorized practice of law and improperly accepted legal fees from those nonattorneys.

On balance, the court concludes that the appropriate level of discipline for the found misconduct in the present proceeding is four years' stayed suspension and four years' probation on conditions, including a two-year period of actual suspension that will continuing until respondent makes restitution with interest for the unearned or illegal fees in seven client matters

and until he establishes his rehabilitation, fitness to practice, and learning in the law in accordance with standard 1.4(c)(ii).

The court does not recommend that respondent be ordered to take and pass a professional responsibility examination because he was ordered to take and pass the Multistate Professional Responsibility Examination in the Supreme Court's February 27, 2013 order in *Taylor* I. Likewise, the court does not recommend that respondent be required to attend the State Bar's Ethics School because he is required to attend and successfully complete that course under the conditions of his disciplinary probation in *Taylor* I.

Recommendations

The court recommends respondent SWAZI ELKANZI TAYLOR, State Bar number 237093, be suspended from the practice of law in California for four years, that execution of the four-year suspension be stayed, and he be placed on probation for four years subject to the following conditions:

1. Taylor is suspended from the practice of law for the first two years of probation and he will remain suspended until the following requirements are satisfied:

    i. He makes restitution to the following payees (or reimburses the Client Security Fund, to the extent of any payment from the fund to the payees, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles:

        (1) Fernando Soriano in the amount of $6,275 plus 10 percent interest per year from April 16, 2012;

        (2) Basia White in the amount of $6,500 plus 10 percent interest per year from May 15, 2012;

        (3) John Higginson in the amount of $12,800 plus 10 percent interest per year from July 25, 2012;

        (4) Kim Tolbert in the amount of $10,641.30 plus 10 percent interest per year from August 10, 2012;

        (5) Kenny Sullivan and Penny Sullivan in the amount of $5,150 plus 10 percent interest per year from April 1, 2012;

(6) Thomas Segnit and Susan Segnit in the amount of $2,000 plus 10 percent interest per year from April 7, 2009; and

(7) Heidi Lemmon in the amount of $3,900 plus 10 percent interest per year from September 7, 2010.

ii. He provides proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)

2. Taylor is to comply with the provisions of the State Bar Act, the State Bar Rules of Professional Conduct, and all of the conditions of this probation.

3. Within 30 days after the effective date of the Supreme Court order in this proceeding, Taylor is to contact the State Bar's Office of Probation in Los Angeles and to schedule a meeting with Taylor's assigned probation deputy to discuss the terms and conditions of his probation. Upon the direction of the Office of Probation, Taylor is to meet with the probation deputy either in-person or by telephone. Thereafter, Taylor is to promptly meet with the probation deputy as directed and upon request of the Office of Probation.

4. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, Taylor must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.

5. Taylor is to submit written quarterly reports to the State Bar's Office of Probation in Los Angeles. The reports must be received by the Office of Probation or postmarked no later than each January 10, April 10, July 10, and October 10. In each report, Taylor is to state, under penalty of perjury under the laws of the State of California, whether he has complied with the State Bar Act, the State Bar Rules of Professional Conduct, and all the conditions of this probation during the preceding calendar quarter. If the first report will cover less than 30 days, that report must be submitted on the next following quarter date, and cover the extended period.

   In addition to the quarterly reports, Taylor is to submit a final report containing the same information. The final report must be received by the Office of Probation or postmarked no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.

6. Subject to the assertion of any applicable privilege, Taylor is to fully, promptly, and truthfully answer all inquiries of the State Bar's Office of Probation that are directed to him, whether orally or in writing, relating to whether he is complying or has complied with the conditions of this probation.

7. This probation will commence on the effective date of the Supreme Court order in this proceeding. At the expiration of the period of this probation, if Taylor has complied with all

the terms of probation, the order of the Supreme Court suspending him from the practice of law for four years will be satisfied and that suspension will be terminated.

California Rules of Court, Rule 9.20

The court further recommends that respondent SWAZI ELKANZI TAYLOR be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.[9]

Costs

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that those costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: November 27, 2013.

RICHARD A. HONN
Judge of the State Bar Court

[9] Taylor is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (Powers v. State Bar (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is also, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)